

# **EXHIBIT 10**

1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 FRANKLIN BUONO,

Plaintiff,

5 vs.

Index Number  
7:17-CV-05915-  
PMH-LMS

6 POSEIDON AIR SYSTEMS, VICTORY  
7 AUTO STORE, INC., VICTORY AUTO  
8 STORES, INC., d/b/a POSEIDON AIR  
SYSTEMS, WORTHINGTON INDUSTRIES,  
INC. and TYCO FIRE PRODUCTS LP,  
Defendants.

9 TYCO FIRE PRODUCTS LP,  
Third-Party Plaintiff,

10 vs.

11 OPRANDY'S FIRE & SAFETY, INC.,  
Third-Party Defendant.

12  
13 July 14, 2020  
10:04 a.m.

14  
15 Remote video-teleconference deposition of KURT  
16 JULIANO, taken by Third-Party Defendant Oprandy's  
17 Fire & Safety, Inc., held at Lancaster, NY, pursuant  
18 to notice, before Elizabeth F. Tobin, a Registered  
19 Professional Reporter and Notary Public of the State  
20 of New York.

A P P E A R A N C E S:

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(via video-teleconference)

ALSO PRESENT:

JACK DANON

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and among counsel for the respective parties hereto, that the filing, sealing and certification of the within deposition shall be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form of the question, shall be reserved to the time of the trial;

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed before any Notary Public with the same force and effect as if signed and sworn to before the Court.

Federal Rule 30(3) provides: The parties may stipulate, or the court on motion order, that a deposition may be taken by telephone or other remote means. For the purpose of this rule and Rules 28(a), 37(a)(2) and 37(b)(1), the deposition takes place where the deponent answers the questions.

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K. Juliano

COURT REPORTER: Good morning. My name is Elizabeth Tobin. I am a New York State stenographic reporter and a registered professional reporter. Today's date is July 14, 2020 and the time is approximately 10:04 a.m. This is the deposition of Kurt Juliano in the matter of Buono versus Tyco, et al. This case is venued in the United States District Court for the Southern District of New York. The case number is 7:17-CV-05915-PMH-LMS.

At this time I will ask counsel to identify yourself, state whom you represent and agree on the record that there is no objection to this deposition officer administering a binding oath to the witness remotely via video-teleconference.

MR. FROMSON: Plaintiff this is Kenneth Fromson. I have no objection.

MR. KIRKPATRICK: James Kirkpatrick on behalf of Tyco. No objection.

MS. FAPPIANO: Tara Fappiano on behalf of Oprandy's Fire & Safety. No objection.

K U R T J U L I A N O ,

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K. Juliano

of lawful age, called by the Defendants for examination pursuant to the Federal Rules of Civil Procedure, having been first duly sworn remotely upon agreement of all counsel, as hereinafter certified, was examined and testified as follows:

EXAMINATION OF KURT JULIANO

BY MS. FAPPIANO:

Q. Good morning, Mr. Juliano. Thank you for being here today.

A. Good morning.

Q. My name is Tara Fappiano from Haworth, Barber & Gerstman. I represent Oprandy's Fire & Safety. I'm not going to give you a lot of instructions this morning, only to mention that because we are doing this virtually, one of the things to just be aware of is that if for any reason at all you can't hear me, I freeze up in any way, it may not be evident to me from this side of the camera. So just let me know that that's happening and we will fix it and repeat the question. Otherwise, I will assume that you're hearing everything I'm asking and understanding the questions unless you tell me otherwise.

Okay?

1 K. Juliano

2 A. Yes.

3 Q. I mentioned off the record but to put  
4 this on the record, I have already marked into our  
5 exhibit share Exhibit 1 which is an expert  
6 disclosure which includes your expert report  
7 appendix A, which is your curriculum vitae, appendix  
8 B, which is listed as materials reviewed, and  
9 appendix C, which is marked select materials  
10 considered.

11 And you have the ability to see that,  
12 correct?

13 A. Correct.

14 (Exhibit 1, expert disclosure, marked for  
15 identification.)

16 Q. If you would first just take a look at  
17 your CV which is, I believe, page 13 of the PDF.  
18 It's appendix A.

19 A. Okay.

20 Q. Could you just verify that that is, in  
21 fact, an accurate copy of your CV?

22 A. Yes.

23 Q. Could you just tell me when this CV was  
24 prepared that we're looking at here on exhibit  
25 share?

1 K. Juliano

2 A. I believe December of 2019.

3 Q. Have there been any updates or additional  
4 information to your CV since December of 2019?

5 A. No.

6 Q. I do know that when I turn my head to  
7 look at the exhibits it's hard for the mic to pick  
8 it up. So I'm going to my hard copy and hopefully  
9 that will make things easier.

10 You put at the top of your CV that you  
11 are a fire protection specialist. What do you mean  
12 by that?

13 A. I am the vice-president and I run the  
14 sales and the manager at a life safety company. Our  
15 company provides service, installation, repairs to  
16 all types of fire systems and life safety equipment.

17 Q. Is there a certification that one obtains  
18 to become a fire protection specialist?

19 A. There are -- I have many certifications  
20 through manufacturers, through third parties and  
21 things of that nature.

22 Q. I'm going to ask you about those. My  
23 question is specifically, to be a fire protection  
24 specialist, is that a specific license or  
25 certification or degree, something like that?



1 K. Juliano

2 A. No.

3 Q. Most recently you're affiliated with All  
4 State Fire & Safety, correct?

5 A. Correct.

6 Q. Do you do expert and consulting work  
7 through this company or is that a separate line of  
8 business for you?

9 A. Through All State Fire.

10 Q. As a vice-president and partner of All  
11 State Fire, do you have an ownership interest in the  
12 company?

13 A. Yes.

14 Q. What is your percentage of ownership?

15 A. Ten.

16 Q. Ten percent?

17 A. I'm sorry.

18 Q. I'm sorry. I didn't hear your response  
19 to that. What is your percentage?

20 A. Ten percent.

21 Q. I'm noticing on my end, just so you're  
22 aware, there's a little bit of a delay between what  
23 I'm seeing and what I'm hearing. So just as we're  
24 going forward, that's what I'm waiting for. Okay?

25 A. Okay.

1 K. Juliano

2 Q. Can you tell me generally what your  
3 duties are at All State Fire?

4 A. I oversee the division managers. We have  
5 multiple divisions including a suppression division,  
6 a sprinkler division and an electronics division  
7 which includes fire alarms, CCTV, security systems  
8 and I also oversee the hood cleaning division. I'm  
9 responsible for all aspects of sales. I am the lead  
10 liaison with the manufacturers reps and I hire and  
11 fire key personnel.

12 (Court reporter requested clarification.)

13 Q. In addition to all of those duties that  
14 you just described, you also do expert and  
15 consulting work; is that correct?

16 A. I have in the past.

17 Q. Are you doing that currently?

18 A. I am doing it on this case currently.

19 Q. Are you doing it on any other cases  
20 besides this case at this time?

21 A. No.

22 Q. When was the last time that you worked on  
23 other cases in an expert or consulting role besides  
24 this case?

25 A. 2017.

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K. Juliano

Q. As of 2017 what percentage of your time was spent on expert and consulting work versus the work you do for All State that you just described?

A. Very little. I would say less than one percent.

Q. Just say in the three years leading up to 2017, how many cases would you work on a year?

A. The last one was 2017.

Q. So would you have one a year; is that fair?

A. One or less. I did not work on a case in 2018 or 2019.

Q. I think I just want to make sure I got clarity on that. Prior to 2017 about how many cases would you work on per year?

A. I had a case the previous year in 2016.

Q. Okay. Understood. And that was just one case?

A. Yes.

Q. The cases that you did work on besides this one going back to 2016, were they cases that were in litigation?

A. Yes.

Q. And obviously I'm talking about besides

1 K. Juliano

2 this case since we know we're in litigation. Have  
3 you testified in connection with any cases in the  
4 past in which you served as an expert or had a  
5 consulting role?

6 A. No.

7 Q. Have you ever testified at a deposition  
8 like this prior to today?

9 A. Yes.

10 Q. How many times before?

11 A. Once.

12 Q. Approximately when was that?

13 A. 2018.

14 Q. Was that a case in which you were serving  
15 as an expert?

16 A. No. My company All State Fire sued a  
17 business owner for lack of payment.

18 Q. The cases that you worked on previously  
19 as an expert, were they for plaintiffs or defendants  
20 or both?

21 A. The last one in 2017 I worked for a fire  
22 investigation firm. My role was to determine if the  
23 kitchen hood fire system was installed incorrectly.  
24 The previous one was for a law firm and, very  
25 similar, I determined that the system was installed

1 K. Juliano

2 incorrectly.

3 Q. The case in which you were working for  
4 the fire investigation firm, who hired you to do  
5 that work?

6 A. The fire investigation firm direct.

7 Q. And the one before that where you were  
8 hired by a law firm, was that a law firm  
9 representing a plaintiff, a defendant, something  
10 else?

11 A. I believe the plaintiff.

12 Q. Do you remember the name of that case?

13 A. The one in 2017 was Jing Li Chinese  
14 Restaurant. And the previous one was Carmine's  
15 Restaurant.

16 Q. The case that you just mentioned, where  
17 was that pending, if you remember?

18 A. That was Clarence, New York, which is a  
19 suburb of Buffalo, New York.

20 Q. In preparation for today, and I don't  
21 want to know the content of your conversations with  
22 counsel, but did you have any conversations with  
23 counsel before today?

24 A. Yes.

25 Q. How many conversations did you have?

1 K. Juliano

2 A. Regarding today's meeting or overall?

3 Q. Just in preparation for today.

4 A. One.

5 Q. When was that?

6 A. Yesterday.

7 Q. How long did that last?

8 A. Approximately two hours.

9 Q. Who did you speak with?

10 A. James Kirkpatrick and two of his  
11 colleagues.

12 Q. Do you recall who those were?

13 A. I do not. I'd be guessing.

14 Q. Just in preparation for today, did you  
15 review any materials?

16 A. Yes.

17 Q. What did you review?

18 A. The Taranto deposition and I believe four  
19 other reports.

20 Q. From other experts?

21 A. Yes.

22 Q. Do you recall which ones?

23 A. You know what, I did not write down the  
24 names. I apologize.

25 Q. That's okay. Do you know if you read the

1 K. Juliano

2 reports of either Derek Nolan or Eric Boelhouwer?

3 A. I believe I have.

4 Q. Was that in preparation for the  
5 deposition or at a prior time?

6 A. At a prior time.

7 Q. What is your hourly rate for the work  
8 that you're doing in connection with this case?

9 A. \$225 an hour.

10 Q. About how many hours did you spend in  
11 preparation for the deposition in addition to the  
12 two hours you spent on the phone or speaking to  
13 counsel?

14 A. Approximately 35.

15 Q. How did you first come to learn of this  
16 case?

17 A. I was contacted by Mr. Kirkpatrick and  
18 his firm.

19 Q. When was that?

20 A. I believe early March 2020.

21 Q. Had you ever worked with Mr. Kirkpatrick  
22 or his firm before this case?

23 A. No.

24 Q. You mentioned you have a number of  
25 certifications and those are listed on your CV,

1 K. Juliano

2 correct?

3 A. Correct.

4 Q. If I am understanding these correctly,  
5 these are manufacturer specific certifications; is  
6 that correct?

7 A. Correct.

8 Q. And those are offered by the  
9 manufacturers for the identified fire suppression  
10 systems that are listed on the CV; is that correct?

11 A. Correct.

12 Q. If you could just explain --

13 A. Also one from the --

14 Q. Go ahead. You can finish.

15 A. Also one from the city of Rochester.

16 Q. Is that on the CV? Oh, yes, I see it at  
17 the end. And that's a certificate of fitness for  
18 fire extinguishers?

19 A. Yes.

20 Q. The ones offered by the manufacturers for  
21 their fire suppression systems, how do you obtain  
22 that certification? Can you just tell me generally,  
23 is it offered by the manufacturer, a third-party  
24 company, something else?

25 A. It is direct from the manufacturer. The



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K. Juliano

company must be a certified distributor for the manufacturer and then after that anyone who is to design, install, inspect or recharge must gain certification through that manufacturer.

Q. Is the certification given to the individual or is it given to the company that the individual works for?

A. It goes to the individual with the company's name on it. It is not transferable if the employee leaves and goes to another firm.

Q. Throughout the CV, just for those certifications from the manufacturers is what I'm talking about now, you list dates that start, I think the earliest in 1996 to the present.

Is this a certification that has to be renewed on any type of periodic basis?

A. Yes. Typically three years for each of the manufacturers.

Q. To do that renewal, is there continued education that's required?

A. No.

Q. How do you redo it every three years or so generally?

A. Typically the manufacturer for a company

1 K. Juliano

2 of our size, which I would consider to mid, maybe a  
3 little larger, would come out to our location and  
4 spend a day doing the certification. We have also  
5 done recently online certifications.

6 Q. Is that the same process for getting the  
7 certification as it is to renew it or is it  
8 something different?

9 A. No, it's technically the same.

10 Q. Is that true for all of the manufacturers  
11 that are listed on this CV that they would --  
12 distance learning aside for the time being -- they  
13 would come to your office and provide those in live  
14 classes?

15 A. I believe Pyro-Chem we may have done one  
16 in Syracuse, New York.

17 (Court reporter requested clarification.)

18 Q. The materials that you were taught on in  
19 these classes, who prepared those?

20 A. The manufacturers.

21 Q. Specifically talking about the Pyro-Chem,  
22 you listed Pyro-Chem Kitchen Knight II  
23 certification. When did you first get that  
24 certification?

25 A. I believe in 1996 I was with a company

1 K. Juliano

2 called Lane Fire & Safety.

3 Q. When you came to All State, did you have  
4 to renew that certification?

5 A. Yes.

6 Q. Was that done in 2008?

7 A. I would have to confirm, either 2008 or  
8 2009. Without looking at it, I would be guessing.

9 Q. Have you renewed that certification every  
10 three years or so since 2008 or 2009?

11 A. Yes.

12 Q. When was the last time you renewed?

13 A. I believe early this year, February or  
14 March.

15 Q. Of 2020?

16 A. 2020, yes.

17 Q. Do you still have the materials that were  
18 taught in that renewal class in February or March of  
19 2020?

20 A. Yes. I have the equipment manual.

21 Q. For the Kitchen Knight II system,  
22 correct?

23 A. Correct, yes.

24 Q. Anything else given to you in that class?

25 A. I'm sorry.

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K. Juliano

2

Q. Was anything else provided to you in  
3 terms of teaching materials in that class?

4

A. No.

5

Q. Had you taken a class for your  
6 certification on the Pyro-Chem system prior to 2016?

7

A. Yes.

8

Q. When was the last time prior to February  
9 of 2016 that you had taken one of those classes?

10

A. My guess would be 2016 or 2017,  
11 approximately three years prior.

12

Q. When you took the class, at that point in  
13 time were the materials that you were provided and  
14 taught upon just the manual?

15

A. Yes.

16

Q. In your review of the materials for this  
17 case -- strike that.

18

In reviewing this case overall, you  
19 reviewed additional materials, correct?

20

A. Correct.

21

Q. And those are listed, I believe, it's  
22 appendix B of Exhibit 1. Which is at page 16 of the  
23 exhibit; is that correct?

24

A. Give me one sec.

25

Q. Take your time.

1 K. Juliano

2 A. Are you looking at the Pyro-Chem  
3 products?

4 Q. No. I'm looking at appendix B which is  
5 page 16 and it's titled under "materials  
6 considered." Do you see that? It's page 16 of the  
7 PDF. It might not be marked page 16 of the exhibit.  
8 That might be what's confusing.

9 A. I do. Appendix B, yes.

10 Q. Is that list of materials considered in  
11 appendix B a complete list of everything you  
12 reviewed in preparation of your report?

13 A. I believe so.

14 Q. And I believe you mentioned to me that  
15 you also reviewed the recent testimony of  
16 Mr. Taranto, correct?

17 A. Yes.

18 Q. Have you reviewed the testimony of any  
19 other witnesses to this point?

20 A. I did review Brian Scott's and I think  
21 Franklin Buono.

22 Q. I see the ones that are listed on there.  
23 Besides what's listed in appendix B --

24 A. I'm sorry.

25 Q. It's my fault. I wasn't be clear enough.

1 K. Juliano

2 Have you reviewed the testimony of any of the other  
3 experts?

4 A. Yeah, I did review, I believe, three or  
5 four yesterday. I do not have their names.

6 Q. Did you review Hejzlar?

7 A. Yes.

8 Q. And I only just received Coelho today.  
9 Did you review Coelho?

10 A. I believe so.

11 MR. KIRKPATRICK: This may help. I just  
12 object for vagueness in terms of whether he's  
13 talking about deposition testimony for the  
14 reports.

15 MS. FAPPIANO: I can clarify that. No  
16 problem.

17 Q. And my question pertained, Mr. Juliano,  
18 to whether you read the testimony of those experts  
19 as opposed to their reports.

20 A. I'm sorry. I read their reports.

21 Q. That's fine. Do you have any  
22 certification as a fire investigator?

23 A. No.

24 Q. Have you ever worked as a firefighter or  
25 volunteer firefighter?

1 K. Juliano

2 A. No.

3 Q. Have you ever been certified to do  
4 balloon testing?

5 A. Balloon testing is required by the --  
6 each of the manufacturers outside of their manual  
7 and it's going to the certifications. That is how,  
8 yes.

9 Q. Let me ask some more questions about that  
10 then. In these classes that you took for the  
11 certifications and the renewal of your  
12 certifications with the various manufacturers, was  
13 education provided in how to do balloon testing?

14 A. Typically going through the manual with  
15 the instructor, a lot of times questions are asked  
16 and that may have come up. I'm not sure. Doing a  
17 balloon test or a pipe integrity test is fairly  
18 simple and routine. So I can't imagine much  
19 discussion on that.

20 (Court reporter requested clarification.)

21 Q. Have you personally done balloon testing  
22 or pipe integrity testing as part of your work with  
23 All State Fire and safety?

24 A. Not with All State Fire but, yes, with a  
25 previous company, a technician.

1 K. Juliano

2 Q. Which company?

3 A. I'm sorry. You broke up.

4 Q. Which company did you do with work with?

5 A. Lane Fire & Safety.

6 Q. Back to your CV, you list that you are a  
7 principal committee member for NFPA 17 and 17A.  
8 What does that mean?

9 A. That means I am a voting member and  
10 attend the meetings regularly.

11 Q. How often do those meetings happen?

12 A. Typically annually.

13 Q. As a principal committee member, were you  
14 involved at all in any of the drafting of the  
15 standards in NFPA 17 or 17A?

16 A. What happens, every three to five years a  
17 new revision of a NFPA manual comes out. And the  
18 meetings consist of making -- taking public input  
19 and at some point voting on whether to accept to  
20 make a change or keep it the same for the next  
21 revision of the manual.

22 Q. And you started that work, for lack of a  
23 better term, in 2015?

24 A. Yes.

25 Q. Without revealing any privileged



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K. Juliano

information, can you tell me what it was that you were asked to do when you were retained on this case, what the understanding of your assignment was?

A. To give my opinion on what had happened with the accident through the fire protection side.

Q. What would from the fire protection side entail?

A. One thing that was clear to me from the fire protection side is the company Oprandy's was not certified by the manufacturer to be working on the cylinder in question. So that was the biggest subject.

Q. In preparation of your report including the time to review the materials, prepare the report, how many hours did you spend doing that work?

A. Approximately 35.

Q. Did you bill your time for that work, those 35 hours?

A. Yes.

Q. And you've been paid?

A. Yes. I'll clarify that. The first invoice went out. I have not invoiced for June or July yet. But the first invoice was paid.

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K. Juliano

Q. In doing your review and preparing your report, did you inspect any type of equipment?

A. Physically?

Q. Yes.

A. No.

Q. Did you obtain or endeavor to obtain any type of exemplar equipment?

A. Could you repeat that question?

Q. Did you obtain or try to obtain any type of exemplar equipment in your review of this case?

A. Yes. I reviewed the OSHA reports, the depositions of Mr. Taranto, both technicians who were injured and I believe the owner of Oprandy's and his wife.

Q. So you reviewed those materials. What I'm asking is, did you try to -- did you physically inspect any type of equipment, component parts, anything like that that you obtained from any source?

A. No.

Q. Whether those component parts were involved in this accident or you obtained ones that would be an example of the equipment involved?

A. I'm sorry. Yeah, I did review some tanks

1 K. Juliano

2 from my shop.

3 Q. What did you review in your shop?

4 A. We have numerous Pyro-Chem Kitchen Knight  
5 cylinders, all different sizes. I confirmed that we  
6 did not carry a so-called test tank. All the tanks  
7 that we had were agent tanks.

8 Q. About how many of those did you have and  
9 did you review?

10 A. Approximately 20.

11 Q. Did you maintain a list of those or  
12 photographs, anything to itemize what you reviewed  
13 in terms of the agent tanks in your shop?

14 A. No.

15 Q. Would you be able to create such a list?

16 A. Yes.

17 MS. FAPPIANO: I'm going to ask that you  
18 do that and provide that to us and I will  
19 follow up with that request in writing.

20 THE WITNESS: Okay.

21 Q. Just so I'm clear, everything that you  
22 had in your shop was an agent tank; is that correct?

23 A. Versus a test tank?

24 Q. Yes.

25 A. Yes.

1 K. Juliano

2 Q. Are you okay, by the way, with that  
3 terminology, agent tank versus test tank? Some of  
4 the witnesses use different --

5 A. No. No. I am good.

6 Q. Okay. Good.

7 And were all of the agent tanks that you  
8 reviewed ones that were part of the Kitchen Knight  
9 II system?

10 A. I believe there were some from Kitchen  
11 Knight I as well.

12 Q. And I didn't see that you had a  
13 certification in Kitchen Knight I systems; is that  
14 correct?

15 A. I would need to verify that. Back with  
16 Lane Fire & Safety in 1995, '96, I'm not sure at  
17 that point if Pyro-Chem was in Kitchen Knight I or  
18 II. I actually think it was Kitchen Knight I  
19 initially at some point.

20 Q. Obviously you reviewed a report in this  
21 case, correct?

22 A. Yes.

23 Q. In all of the review that you did to  
24 prepare the report, did you do that yourself or did  
25 you have the assistance of other people?

1 K. Juliano

2 A. I did have the assistance of one other  
3 person.

4 Q. Who was that?

5 A. John Bielecki. He is my operations  
6 manager at All State Fire.

7 Q. In doing that review with the assistance  
8 of Mr. Bielecki, did you review all of the materials  
9 yourself or did you divide that work with  
10 Mr. Bielecki or something else?

11 A. I did divide part of it to Mr. Bielecki.  
12 He is in charge of our -- we utilize a third party  
13 tank training company to come up to certify my  
14 recharge testing facility. So Mr. Bielecki and two  
15 others are certified every five years and his  
16 expertise is more in the CGA and OSHA requirements  
17 than myself. That's why I brought him in.

18 Q. So to be clear, the opinions that are in  
19 this report which relate to the CGA and OSHA  
20 requirements, are those your opinions or  
21 Mr. Bielecki's opinions or something else?

22 A. No, those would be mine with him doing  
23 some research for me and more assistance.

24 Q. And you relied then on the research that  
25 he did?

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2 A. Correct.

3 Q. Did you --

4 A. Also, on his research and also from our  
5 third-party company that has certified us reviewing  
6 their certifications and their paperwork.

7 Q. Did you also rely on Mr. Bielecki's  
8 expertise in the OSHA requirements and the CGA  
9 requirements?

10 A. Yes.

11 Q. And the third-party company that you  
12 referred to, what's the name of that?

13 A. Steigerwalt & Associates.

14 Q. Do they publish materials that you  
15 reviewed in forming your opinions?

16 A. Yes.

17 Q. Did you keep copies of those materials  
18 with this file?

19 A. Yes.

20 Q. Would you be able to identify what  
21 materials you reviewed from that third-party  
22 company?

23 A. Yes.

24 MS. FAPPIANO: I'm going to ask that that  
25 be compiled as well and provided to us. I will

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2 obviously follow that up with a written  
3 request.

4 Q. In doing your review and preparing your  
5 report, did you keep notes or take notes?

6 A. I did.

7 Q. Do you still have those notes?

8 A. I think I could -- I believe.

9 MS. FAPPIANO: I'm going to ask that you  
10 hold on to those notes and we'll be asking for  
11 those as well.

12 Q. Did you also prepare drafts of your  
13 report?

14 A. More jotting down findings, material from  
15 manufacturers, from a third party, from the CGA,  
16 material from 17A, NFPA 17A, things of that nature  
17 put down in writing, with the help of Mr. Bielecki  
18 as well.

19 Q. Is that part of the notes that you were  
20 referring to?

21 A. Notes and documents, yes.

22 Q. Now apart from the materials that you  
23 were provided, the work that Mr. Bielecki did and  
24 the research that you did by reviewing the materials  
25 from the third-party company, did you do any other

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2 additional independent research to prepare your  
3 report?

4 A. No.

5 Q. In any of the cases that you worked on  
6 previously, were those cases in which you were asked  
7 to assess warnings and instructions?

8 A. No.

9 Q. Were you asked to assess the warnings and  
10 instructions in this case or did you understand that  
11 to be part of your assignment?

12 A. Part of it, yes.

13 Q. Do you have any experience or training in  
14 writing warnings and instructions in the fire  
15 suppression industry?

16 A. No.

17 Q. Have you ever actually done that in  
18 practice?

19 A. No.

20 Q. Do you have any certifications in that  
21 area?

22 A. No.

23 Q. Do you belong to any professional  
24 associations which are dedicated to warnings and  
25 labels and instructions?



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2 A. No.

3 Q. I'm going to start going to your report  
4 now. I'm only interested in some portions of it, so  
5 I may jump around. If at any point you're not sure  
6 what I'm talking about, just let me know and I'll  
7 try to be more clear.

8 I didn't see in your report what  
9 methodology you used to reach your opinions in this  
10 case. Could you describe to me what your  
11 methodology was to reach your opinions in this case?

12 A. It was nothing scientific. It was  
13 strictly based off my 25 years of experience in the  
14 industry.

15 Q. What did you do to form your opinions  
16 beyond the review of the materials that we already  
17 discussed?

18 A. Review, again, manufacturer manuals was a  
19 large part of it. NFPA 17A, the CGA along with  
20 Mr. Bielecki. And fire code of New York State.

21 Q. Are there any guidelines or standards  
22 that guided the way that you conducted your review?

23 A. Oh, yeah, in our industry in New York  
24 State we start with the New York State Fire Code  
25 which will turn it on to manufacturer manuals, NFPA.

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There will be applicable NFPA, CGA requirements.

Q. How did you make the determination as to which of those standards you referenced, the NFPA, CGA, the fire code? How do you make the decision which of those apply to this case?

A. Right now the New York State code, I don't have it in front of me, it will reference that obviously the manufacturer we know is Pyro-Chem Kitchen Knight. The CGA would take care of the tank. NFPA 17A is the only applicable NFPA reference and DOT for the cylinder.

Q. What is the basis for your statement that the NFPA 17A is the only application reference from the NFPA?

A. So, Kitchen Knight II is a wet chemical system which is direct correlation with what NFPA 17A is.

Q. Did you also consider whether NFPA 17 also applies to this case?

A. NFPA 17 is for dry chemical systems. I eliminated that quickly.

Q. Did you also consider whether NFPA 10 applies?

A. I believe in the second or third

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paragraph it clearly spells out that fixed fire starting systems do not apply to that standard.

Q. Are you aware that some other experts disagree with that conclusion, specifically Mr. Taranto?

A. I did, yes.

Q. But it's your opinion that the only applicable standard is 17A of the NFPA; is that correct?

A. After reading Mr. Taranto's report, I did a little research and I can confidently say that NFPA 10 would not apply in this case at all.

Q. Is that because we're not dealing with a portable fire extinguisher, is that the reason?

A. Again, the second or third paragraph states that the standard does not apply to fixed fire suppression systems, in so many words.

Q. Assessing the various materials, evidence and data that you reviewed, did you take into account their sources?

A. The sources of who? Mr. Taranto?

Q. No. The sources -- so you reviewed a number of -- you reviewed a lot of materials here; testimony, reports, manuals, standards. In

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2 assessing that data, did you take into account the  
3 source of that data?

4 MR. KIRKPATRICK: Objection to form.

5 A. I don't understand your question. Could  
6 you clarify what you're asking?

7 Q. Let me be more specific. In reviewing  
8 the deposition testimony of a fact witness, did you  
9 provide different weight to that testimony depending  
10 upon who the witness was?

11 A. No.

12 Q. Did you apply different weight to the  
13 opinions that you were reviewing of Mr. Taranto  
14 based upon his role in this case?

15 MR. KIRKPATRICK: Objection to form.

16 A. Can you repeat that?

17 Q. I'm going to restate it. Let me do it  
18 this way.

19 A. Please.

20 Q. Did you assess the opinions of  
21 Mr. Taranto any differently than other expert  
22 witnesses based upon his role in the case?

23 MR. KIRKPATRICK: Objection to form with  
24 respect to role in the case.

25 Q. In that he was hired by the plaintiff?

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A. No.

Q. In reviewing the -- in reviewing the testimony of various fact witnesses that you listed, did you assess any credibility of those witnesses as you were analyzing that testimony?

MR. KIRKPATRICK: Objection to form.

A. The one thing that jumped out was Mr. Taranto with his continued reference to NFPA 10. So to me that, for lack of a better word, ruined his credibility.

Q. Obviously we just talked about it. You had a number of certifications and renewal certifications with the Pyro-Chem system over the years. In doing your review in this case did you ever substitute that knowledge or experience for information about the training process that was received to by the Tyco witnesses?

A. No.

MS. FAPPIANO: I'm going to go straight down to -- let me offer you this right now, because we've been doing this for about an hour. Are you okay to continue or do you want to take a five-minute break because this would be a good time?

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2 THE WITNESS: I'm okay.

3 MS. FAPPIANO: Liz, are you okay?

4 COURT REPORTER: Yes, I am. Thank you.

5 MS. FAPPIANO: Then we'll keep going.

6 Anybody else? Sorry, I didn't mean to exclude.

7 If anybody else needs a break, just let me

8 know.

9 Q. I'm going to go down to VI on your report  
10 which is page 8 of the report. I don't have the PDF  
11 open, so if you need that key reference, just let me  
12 know.

13 A. Okay. I'm there.

14 Q. And section VI is titled application to  
15 Taranto report, correct?

16 A. Yes.

17 Q. Was the main purpose of your review and  
18 report to rebut the opinions of Mr. Taranto?

19 A. Both to rebut his opinions and to offer  
20 mine.

21 Q. I'm just going to go through some of  
22 those opinions now. At the bottom of page 8 you  
23 state, it is a, quote, basic premise of the  
24 industry, end quote, that only individuals and  
25 companies certified to work on a particular system

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2 may work on that system.

3 I want to start with the language basic  
4 premise of the industry. What is the foundation for  
5 that statement?

6 A. So I have been through, I believe, five  
7 or six different manufacturer trainings and every  
8 one of those talks about if you are to work on  
9 another system without having the certification, you  
10 are putting yourself out to liability. The  
11 manufacturer will not stand behind it if you are not  
12 certified. If you cannot access the correct parts  
13 to each manufacturer, if you do not have direct  
14 access to bulletins, recalls, product changes,  
15 things of that nature, you are opening yourself up  
16 for liability.

17 So in my opinion, whether you're a larger  
18 company like mine or a small company that may only  
19 have one manufacturer, you know this. You know that  
20 if you are a Protex distributor and you want to  
21 touch a Kidde system or Pyro-Chem system, you are  
22 taking on that risk on your own. Again, you do not  
23 have access to manufacturer parts and, more  
24 importantly, bulletins, recalls and things of that  
25 nature.

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2 Q. So is it fair to say that the source of  
3 that understanding within the city is through the  
4 various certification trainings that are offered by  
5 the manufacturers; is that fair?

6 A. Yes.

7 Q. And you also say individuals in companies  
8 who are certified to work on a particular system may  
9 work on that system.

10 So are you talking about in this case the  
11 Kitchen Knight system specifically?

12 A. Yes.

13 Q. At the time of this accident were the  
14 plaintiff and Mr. Foust working on this system when  
15 the accident actually occurred?

16 A. I believe they were working on a test  
17 tank, so yes.

18 Q. Do you consider the test tank to be part  
19 of the Kitchen Knight II system?

20 A. Yes. I consider it to be part of the  
21 product line for Kitchen Knight --

22 Q. That's a different question. What do you  
23 mean by product line?

24 A. So to become an authorized distributor,  
25 Pyro-Chem is a good example. They have the Kitchen



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2 Knight II wet system which is one product line.

3 They have fire extinguishers which is another  
4 product line. They had dry chemical systems. They  
5 have clean agent systems. These are each different  
6 product lines. Once you're an authorized  
7 distributor, you have access to that product line  
8 only.

9 So any product that would apply in this  
10 case to a Kitchen Knight fire system, you would have  
11 access to all of the data, the bulletins and things  
12 of that nature.

13 Q. How do you distinguish a product line  
14 then from a system just for purposes of your  
15 testimony?

16 A. I believe two ways. All the  
17 manufacturers have websites that will list -- that  
18 you would log on to as a distributor and it will  
19 list all of the product lines and the parts that you  
20 have access to. I also believe the manuals would  
21 have a list of all the parts to the system in the  
22 manual, the part numbers.

23 Q. So let me ask you specifically then in  
24 this case: Did the manual for the Kitchen Knight II  
25 system have a parts list?

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2 A. I believe it had, yes.

3 Q. That was part of the manual itself or it  
4 was a separate document?

5 A. You know, I don't have that in front of  
6 me to verify.

7 Q. Is there any information in the manual  
8 about the test tank?

9 A. In the manual, I believe it does list the  
10 test tank and during your training with the  
11 manufacturer, a rep will review the manual top to  
12 bottom and anything that the end user or the company  
13 is not that familiar with, you have access to ask  
14 questions on. And you also have that 800 number to  
15 ask questions in the future. They cannot cover  
16 everything, obviously. Each of the manufacturers'  
17 reps, they do have a local rep and they do have a  
18 technical 800 service number.

19 Q. You just testified that the test tank is  
20 listed in a parts list that may or may not be part  
21 of the manual itself. Accepting that it is a part  
22 of the manual, is that what you mean by the test  
23 tank is included in the manual?

24 A. Well, keep in mind the test tank is  
25 exactly the same as an agent tank minus the chemical

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2 inside the tube. So any distributor who's gone  
3 through the training would know that. That's basic.

4 Q. How would they know that?

5 A. The tanks itself are identical. The only  
6 difference, I believe, is either the top or bottom  
7 is painted green and they have the same DOT  
8 markings.

9 Q. Do the trainers in the training,  
10 specifically the ones that you have attended, cover  
11 that in the training?

12 A. I don't recall. I'm not sure. The  
13 trainings go on for eight hours.

14 Q. Is there anything in the manual that says  
15 treat this agent tank the same as you would a test  
16 tank or vice versa?

17 A. No.

18 Q. Are there any instructions in the manual  
19 about how to fill either the agent tank or the test  
20 tank?

21 A. Yes. There is a list.

22 Q. There is a list?

23 A. I don't have it in front of me. But  
24 yeah. It mentions about the psi and the rebuilt  
25 kits and things of that nature. I believe it's 10

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2 or 11 steps.

3 Q. It actually lists 10 or 11 steps for  
4 transferring procedure?

5 A. For recharging the system. I don't have  
6 it in front of me to quote word for word.

7 Q. Are you aware of what the test tank was  
8 intended to be used for the day of the accident had  
9 the explosion not occurred?

10 A. I believe it was to be used for a pipe  
11 integrity test during an inspection.

12 Q. And Mr. Scott was going to be doing that  
13 testing? Were you aware of that?

14 A. I believe I did read that, yes.

15 Q. And he was to be meeting a fire inspector  
16 to do that testing at a local deli. Do you recall  
17 that testimony?

18 A. Vaguely. If that is the case, I would  
19 assume then that would be for a new system install.  
20 I don't see why an inspector, fire inspector, would  
21 need a company like ours for inspection. I'm not  
22 clear what the reasoning was then.

23 Q. Have you ever seen a situation where a  
24 fire inspector sets up an inspection and the balloon  
25 testing is done on the same day?

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2 A. Typically that happens with an authority  
3 having jurisdiction upon completion of a new  
4 installation. That is called an acceptance test.  
5 And that is when you do the pipe integrity test or  
6 the balloon test is another word for it. And the  
7 local fire marshal or AHJ would witness that. I  
8 have never in my 25 years seen an AHJ go out on a  
9 routine semi-annual inspection to witness it. I  
10 don't see why that would happen. It is required at  
11 least annually, so that is extremely routine.

12 (Court reporter requested clarification.)

13 A. AHJ. It stands for authority having  
14 jurisdiction.

15 Q. Mr. Scott wasn't intending to sell this  
16 test tank to anyone, correct?

17 A. To the best of my knowledge.

18 Q. Or to distribute it to or leave it with  
19 the customer that he was going to meet or the fire  
20 inspector?

21 A. I would assume that.

22 Q. We've used both terms, balloon testing  
23 and pipe integrity testing. That's the specific  
24 purpose of this test tank; is that correct?

25 A. Yes.

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2 Q. Back to the bottom of page 8 of the  
3 report, you state, "It appears Oprandy's failed to  
4 follow the rules." Is that a reference to some rule  
5 that only certified dealers may do balloon testing  
6 or pipe integrity testing of a system?

7 A. If you're using a manufacturer's part,  
8 you should be a manufacture distributor. And the  
9 technician who is using it should be certified.

10 Q. Where is that rule? What rule are you  
11 talking about?

12 A. Each of the manufacturers will mention  
13 that in their manual.

14 Q. Is that mentioned in the Pyro-Chem  
15 manual?

16 A. I believe it does warn against  
17 nonauthorized users using the system, yes. I think  
18 it's mentioned a couple of times.

19 Q. For balloon testing or pipe integrity  
20 testing is my question.

21 A. For the system in general.

22 Q. But not specified for pipe integrity  
23 testing or balloon testing; is that correct?

24 A. Not specified, no.

25 Q. You did indicate that some of the

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2 testimony that you read in preparation of your  
3 report was from two of the Tyco witnesses, Adam  
4 Menor and Curtis Harding; is that accurate?

5 A. Yes.

6 Q. Are you aware that there is testimony  
7 that Tyco did not keep track of where their systems  
8 were sold?

9 A. I believe I read that.

10 Q. Are you aware of the testimony that Tyco  
11 did not require there to be proof of certification  
12 for a Kitchen Knight system to be purchased?

13 A. No, I did not see that.

14 Q. And that they did not require proof of  
15 that certification for an individual to buy a test  
16 tank?

17 MR. KIRKPATRICK: Objection to form.

18 Misstates testimony.

19 A. You're breaking up again.

20 Q. I need an answer to that question. Did  
21 you hear the question?

22 A. Can you ask it again, please?

23 Q. I'm going to restate it. Are you aware  
24 of there being any requirement by Tyco that proof of  
25 certification be shown for an individual or a

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2 company to buy a test tank?

3 A. I am aware that you need to be an  
4 authorized distributor to buy a majority of the  
5 parts, to the best of my knowledge.

6 Q. I'm asking specifically about the test  
7 tank. Are you aware of there being any requirement  
8 that a certification be obtained or shown or proven  
9 in some way before that can be purchased?

10 MR. KIRKPATRICK: Objection.

11 A. Just that you need to be an authorized  
12 distributor to provide parts. So there are ways to  
13 obtain parts, other ways obviously.

14 (Court reporter requested clarification.)

15 Q. The last sentence of page 8, we are  
16 warned repeatedly that this is the case. I think  
17 that's referring to this whole conversation right  
18 now about being a certified distributor. What is  
19 your basis for we are warned repeatedly?

20 A. During trainings that is one of the first  
21 things -- not just for Pyro-Chem, for all of the  
22 distributors I've been involved with -- all of the  
23 manufacturers, I should say, I've been involved  
24 with. You are warned do not install products that  
25 you are not licensed for or certified for. The



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2 warning typically is that the manufacturer will not  
3 stand behind it if you are not an authorized  
4 distributor.

5 Q. What do you mean by manufacturer will not  
6 stand behind it?

7 A. So if you were a Pyro-Chem distributor  
8 and you used parts from a different -- from a Kidde  
9 system or a Range Guard, you could void UL listings  
10 and the manufacturer will quickly realize it was not  
11 installed as per their manual and they may not stand  
12 behind it.

13 Q. And is that specific to the test tank  
14 that they will not stand behind the use of the test  
15 tank?

16 A. I'm assuming a test tank would be like an  
17 agent, an agent tank, a pulsation or any other part.  
18 That's how I interpret it.

19 Q. What's the basis for that assumption and  
20 that interpretation?

21 A. You're breaking up again.

22 Q. What's the basis for that assumption and  
23 that interpretation?

24 A. Each of the manuals and each of the  
25 training that is repeatedly stated.

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2 Q. I'm going to turn your attention to  
3 appendix C and you title that "select materials  
4 considered." And the first page after the title  
5 page of appendix C which is page 18 of the PDF,  
6 there's a document at the top it says "Pyro-Chem."

7 Do you see that?

8 A. Yes.

9 Q. And if I'm understanding your report,  
10 this is the manual cover page for the Kitchen Knight  
11 II system; is that correct?

12 A. Yes.

13 Q. Do you know if based upon your review of  
14 all the materials and the evidence in this case if  
15 someone, a company, an individual, were to buy a  
16 test tank separately, would this manual be provided  
17 with it?

18 A. No.

19 Q. So if hypothetically I were to purchase  
20 the test tank, how would I then see this language in  
21 the manual for the Kitchen Knight system?

22 MR. KIRKPATRICK: Objection to form.

23 A. That goes back to -- that goes back to  
24 what we are trained by all the manufacturers. You  
25 should only be working on systems that you are

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2 certified for. So if you bought that and you were  
3 not a distributor, you should not be working on it.

4 Q. This manual and I'm looking at the cover  
5 page that's at the appendix C, it says it's, quote,  
6 provided in electronic format only to individuals  
7 who hold current product training certification; is  
8 that correct?

9 A. Yes.

10 Q. So if you don't have a certification, you  
11 don't get the manual; is that a fair interpretation  
12 of that statement?

13 A. Yes.

14 Q. Where on this page does it talk about who  
15 should or should not be using a test tank?

16 MR. KIRKPATRICK: Objection to form.

17 A. I don't see it.

18 Q. Or where does it talk about who should or  
19 should not be maintaining or servicing the Kitchen  
20 Knight system on this page?

21 A. It does not talk about that on that page.

22 Q. But you included this page as an  
23 attachment to your report, correct?

24 A. Correct.

25 Q. Why did you then include this page and

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not any other portions of the manual to your report?

A. I certainly can supply the entire manual.

Q. Is there something specific in the manual that would discuss then who should or should not be using the test tank?

A. Test tank or any other materials from Pyro-Chem. It does not specify, again, a nozzle, a pulsation, a gas valve or test tank. It talks about products in general.

Q. And you opted not to include that as an attachment here, correct?

A. Let me see. Correct.

Q. What is shown in this Pyro-Chem cover page, it's really information about how one obtains a manual; is that correct?

A. No. It talks about updated material which could be recall, a change in product, and in this case Pyro-Chem would be a perfect example. Ten years ago or so there was a major recall where the tanks were having an issue and required a service collar to be placed around the neck of the tank. It's referring to, in my opinion, things of that nature.

Q. So what you just referred to, that was a

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2 product recall? When was that?

3 A. Not a recall. It was an addition. I  
4 would have to -- approximately ten years ago. And  
5 still ongoing. Some tanks were manufactured with an  
6 issue to the neck of the tank so Pyro-Chem came out  
7 with a collar that -- for each system. It was sent  
8 to the distributor to place around the neck to  
9 prevent injury, I guess, for lack of a better word.  
10 I can supply that document very easily.

11 Q. So if I'm doing the math correctly, we're  
12 talking around 2010; is that fair, that this  
13 happened?

14 A. It was an ongoing issue. So I don't want  
15 to lock into an exact date.

16 Q. How were the end users of those -- I  
17 believe you said they were tanks. How were they  
18 notified of this issue?

19 A. They were notified at the next  
20 inspection. What we did as a distributor was give a  
21 list to Pyro-Chem of our upcoming customers. They  
22 would send out the collar in advance and we would  
23 install it during the next semiannual inspection.

24 Q. What you're referring to, was that an  
25 agent tank or test tank or both?

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2 A. Agent tank.

3 Q. But it was not an issue with test tanks;  
4 is that correct?

5 A. You know, I'm not sure. We don't utilize  
6 test tanks.

7 Q. Do you have any knowledge or information  
8 about whether it did involve an issue with a test  
9 tank that you just described, a collar around the  
10 top being required?

11 A. I don't know offhand. I certainly could  
12 find out.

13 Q. Do you have any information as you sit  
14 here today right now about how users of a tested  
15 tank would have been notified about that issue?

16 A. Some awareness. Notified through the  
17 manufacturer direct for any recall or changes. So  
18 they notify the distributor.

19 Q. The manufacturer's only notification then  
20 went to the distributors; is that fair to say?

21 A. Fair to say. Again, I'm not a Pyro-Chem  
22 or Tyco or Ansul --

23 Q. There was no effort, though, from what  
24 you are aware of, to notify the end users of the  
25 various systems of the issue with these tanks?

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2 A. Again, I would not know what the  
3 manufacturers do other than what they send to a  
4 company like mine.

5 Q. I'm back on page 9. You say, quote, when  
6 designing and manufacturing its products, Pyro-Chem  
7 relies on its authorized --

8 A. I'm sorry. Could you repeat that?

9 Q. "When designing and manufacturing its  
10 products, Pyro-Chem relies on its distributors to  
11 use common sense and adhere to industry standards."

12 Did I read that correctly?

13 A. Yes.

14 Q. What industry standards are you talking  
15 about that there?

16 A. NFPA 17A, CGA with the cylinders, OSHA  
17 and, of course, the Pyro-Chem or the manufacturer  
18 manual.

19 Q. Are you considering the manual an  
20 industry standard then?

21 A. Yeah. I would.

22 Q. What's your basis for considering that to  
23 be an industry standard?

24 A. Say that again.

25 Q. What is your basis for that conclusion,

1 K. Juliano

2 that the manual is an industry standard?

3 A. So where we come from in New York, we  
4 start with the New York State Fire Code. And then  
5 that will reference NFPA, CGA, OSHA and the  
6 manufacturer I believe is listed in there as well.  
7 NFPA 17A would list the same.

8 Q. That sentence that I just read, you refer  
9 to the use of common sense. Are you saying here  
10 that common sense was not employed?

11 A. In the accident?

12 Q. Yes.

13 A. Excuse me. Are you talking about the  
14 accident?

15 Q. Yes.

16 A. I would say that common sense, the two  
17 gentleman in the room recharging were not trained at  
18 all.

19 Q. That was not my question.

20 (Court reporter requested clarification.)

21 A. Common sense through the business owner,  
22 Mr. Scott, you need to train your employees on what  
23 they're doing.

24 Q. Did you review what training was done?

25 A. Yeah, I believe Mr. Scott called it the



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buddy training. And to go further, I think he said he used his own methods and not the methods of the cascade system. He didn't like them or something of that nature. And passed it along to his employees.

Q. Did you see the methods for the cascade system that you just referenced to?

A. No.

Q. Did you have those procedures in any way?

A. No.

Q. Did you evaluate the procedures that were employed by Mr. Scott and, by extension, his employees?

MR. KIRKPATRICK: Objection to form.

A. I've looked at it. He mentioned he had some manuals in his office that were not available to the technicians. I don't believe there were warning signs. I don't believe there were step-by-step instructions in the recharge room, things of that nature.

Q. Did you see or review any information that spoke to the training that Mr. Foust specifically had before this accident?

A. If I recall correctly, he reported that he was not able to train because of children at home

1 K. Juliano

2 and relied on the buddy system, something of that  
3 sort.

4 Q. Did you see that he did --

5 A. I can't hear.

6 Q. Did you see that Mr. Foust actually had a  
7 certification in the materials that you reviewed?

8 A. No, I did not.

9 Q. Did you review the deposition testimony  
10 of either Mr. Slover or Mr. Hawkins?

11 A. I don't believe so.

12 Q. Did you review the testimony that  
13 Mr. Hawkins provided about the procedures that were  
14 utilized for transfilling and the training he  
15 received in that regard?

16 A. No.

17 Q. Now you go on to say in your report that,  
18 "The practices implemented by Mr. Foust and  
19 Oprandy's are, quote, antithetical to every instinct  
20 authorized distributors develop and are trained to  
21 have." Dig into that a little bit.

22 First, do you have any training in human  
23 factors analysis?

24 A. No.

25 Q. How about psychology?

1 K. Juliano

2 A. None.

3 Q. Do you have any certifications in human  
4 factors analysis or psychology?

5 A. No.

6 Q. Is there any basis in the evidence,  
7 literature or other sources you reviewed or relied  
8 upon in forming your opinions for what instinct  
9 Mr. Foust should have had?

10 A. That my comments were based on you are  
11 trained by the manufacturers not to touch another  
12 system that you are not certified for. Injuries can  
13 happen. I believe what we talked about earlier,  
14 about the service collar, the bulletin that was  
15 issued said something to the effect, not following  
16 this procedure could result in serious injury or  
17 death is on the bulletin.

18 Q. So are you saying that that is all based  
19 upon the bulletins and the manuals and the training  
20 or that's instinct that he should have had? Which  
21 is it?

22 A. I'm saying in the industry you should  
23 realize if you are not trained or certified on a  
24 system, injuries can happen, you should not be  
25 touching it.

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Q. So you should just know that is what you're saying?

A. You should know that from being trained by the manufacturer of a fire system.

Q. So is it training or is it instinct?

A. Instinct after going through a training.

Q. Do you have any information at all about what Mr. Foust's employment background was with Oprandy's before this accident occurred?

A. You know, I read the transcript, I think, back in March. I don't believe he had any experience in the field.

Q. Do you know that he had actually worked as a firefighter a long time before he went to work for Oprandy's?

A. Yeah, that would be no experience in fire suppression. Totally different.

Q. Do you know how many times he refilled a test tank or recharged a test tank before this accident occurred?

A. No.

Q. Do you have any information about how many times he did that without incident?

A. No.

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Q. So not knowing any of that information, you still have an opinion that his instincts were wrong on this day; is that correct?

A. Yes.

Q. And he should have had a different instinct all together on that day, correct?

A. Based on the correct training, yes.

Q. I may have asked this already, but you do say in your report, authorized distributors would know to properly train employees as required by the manual and regulations.

My question is: Where in the manual are there any recharging and transfilling procedures?

A. They don't list that. There are many different ways to refill, transfill a tank, many different procedures. I would not expect a manufacturer to teach us how to do that.

Q. In the regulations are there transfilling or recharging procedures?

A. CGA, I believe -- from my standpoint, we utilize a third-party company to train us on that. My understanding is, you get into the CGA, you get into OSHA, from my point of view, I want to do it right. That is why we outsource a professional

1 K. Juliano

2 third-party company to train us on that.

3 Q. Do you not know what regulations discuss  
4 transfilling procedures?

5 A. I don't have the books. Yeah, I'd be  
6 going by the fire code of New York State. It would  
7 be in there.

8 Q. You're sure?

9 A. It would point me in the right direction.  
10 I didn't research that for this.

11 Q. You didn't research it but you are  
12 confident in saying that authorized distributors  
13 would know to properly train their employees as  
14 required by manual and regulations; is that correct?

15 A. Yeah. Keep in mind all the manufacturers  
16 in the training, they offer the 800 technical  
17 service number. If there's any questions, they  
18 would be able to help you out with things of that  
19 nature easily.

20 Q. I actually -- go ahead. I didn't mean to  
21 interrupt you.

22 Where is that 800 number listed?

23 A. Either in the manual or when you are a  
24 certified distributor, the manufacturer will offer  
25 that number to you. And so the employer, in my

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2 case, I would pass that number out to my  
3 technicians. But typically during the training, the  
4 trainer will, in that exhibit we have from  
5 Pyro-Chem, that was a perfect example. I got that  
6 manual from one of my technicians and he wrote that  
7 down right off the bat. Again, most of the training  
8 I've been through offer their own number, and then  
9 they make sure that you have the 800 number. It's  
10 easily accessible.

11 Q. To be clear, this Pyro-Chem manual in  
12 appendix C, the cover page that we've been talking  
13 about, is something that was in your own possession  
14 or your company's possession, correct?

15 A. Correct.

16 Q. And the handwriting that's on that  
17 document, whose handwriting is that?

18 A. His name is Nathan Truss, T-R-U-S-S.

19 Q. And that's an employee of your company,  
20 correct?

21 A. Correct.

22 Q. And he wrote that number onto that cover  
23 page, correct?

24 A. Correct.

25 Q. Did you see him do that?

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A. No.

Q. Do you know when he did that?

A. In my research, I know there are different versions of the manual, so I asked him for a part of the manual. He did that. I didn't talk about it other than that. I have no idea. I'm assuming he did it at training.

Q. Do you know if that 800 number or a different 800 number for technical services is listed preprinted anywhere in the manual?

A. Each manufacturer is different. I know a lot of them have it. I'm not sure on this manual. I'd have to look.

Q. But in the manual that you reviewed for this case, did you see that anywhere?

A. I did not look for it so I have no idea if it is or not.

Q. Was that number printed on the agent tanks that you looked at in your shop when you were reviewing this case and preparing your report?

A. I don't recall.

Q. Did you see an 800 number -- let me strike that.

Did you review any photographs of any of



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the component parts that were involved in this  
accident?

A. Yes, I looked at the OSHA pictures.

Q. In any of those photographs, did you see  
an 800 number listed on the test tank?

A. I don't recall.

MS. FAPPIANO: Why don't we take a  
five-minute break?

(A recess was taken from 11:42 a.m. to  
11:47 a.m.)

Q. You say in your report that Oprandy's  
should have made manufacturer manuals available; is  
that correct?

A. Yes.

Q. And you did read the deposition testimony  
of Patty Scott, correct?

A. Correct.

Q. But you didn't read the testimony from  
Mr. Slover or Mr. Hawkins; is that right?

A. I don't believe so.

Q. And are you aware from the testimony that  
you did review that manuals were kept in a file  
cabinet in the office of Oprandy's?

A. Yes.

1 K. Juliano

2 Q. And that the employees did have access to  
3 that cabinet?

4 A. I don't recall that.

5 Q. You talk about -- I'm sorry, I don't have  
6 the direct quote here. You talk about posting of  
7 warnings and instructions. What warnings and  
8 instructions are you referring to?

9 A. For my shop we have for each tank or  
10 cylinder that we touch, we have both written  
11 instructions and photographs of how to service the  
12 tanks. Warnings, basic warnings, danger warnings,  
13 more or less reminder be careful, the job you're  
14 doing, it could cause injury.

15 Q. Let me break it down then. The warnings  
16 that you just referenced, who prepared those?

17 A. For my shop?

18 Q. Yes.

19 A. So I had joined the company one year in  
20 2008 and we already had the warning signs there.

21 Q. Are those general warning signs or  
22 specific to equipment or component parts that your  
23 employees --

24 A. General. General.

25 Q. Any warnings specific to equipment or

1 K. Juliano

2 other component parts that your employees are  
3 utilizing, are there warnings that are posted for  
4 those?

5 A. So those warnings are all in the manual  
6 and code books that we have inside that room.

7 Q. So you rely then on the manuals for the  
8 warnings for your employees on specific equipment  
9 and its component parts; is that fair to say?

10 A. Manuals and code books.

11 Q. When you say code books, you are  
12 referring to New York State --

13 A. CGA, New York State Fire Code, things of  
14 that nature.

15 Q. OSHA, things like that?

16 A. Yes.

17 Q. And you make those available to your  
18 employees?

19 A. Every cylinder they touch there is a code  
20 book inside that room, inside the recharge room.

21 Q. So it's inside the same room?

22 A. Correct. Yes. Others would have access  
23 to them, too. For example, John, the operations  
24 guy, he has a set of books in his office as well.

25 Q. And that practice of keeping those code

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2 books and manuals in the room, is that a practice  
3 that you adopted due to some sort of standard or  
4 regulation that requires that?

5 A. I know that is reviewed with our  
6 third-party company. They come out, like I said,  
7 every five years, they spend that day with us. Part  
8 of that day is inside the recharge room and pointing  
9 out things like that would be a perfect example.

10 Q. What third-party company are you  
11 referring to again? I'm sorry.

12 A. Steigerwalt.

13 Q. And that's the manufacturer certification  
14 courses, that's a separate thing that your company  
15 does for what purpose?

16 A. Can you repeat that?

17 Q. So that third-party company that comes  
18 in, what's the purpose of their coming there?

19 A. That is to insure -- we realize the  
20 dangers of recharging and touching cylinders. We  
21 were going above and beyond. It helps us keep  
22 up-to-date. We're fire suppression people. Us  
23 keeping up with the CGA, with OSHA requirements, we  
24 rely on this company to do that for us.

25 Q. Is there a requirement that you have that

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2 type of training or consulting service for your  
3 company under a regulation or a standard?

4 A. You know, I would have to check with John  
5 on that, my operations guy. I don't know myself.

6 Q. And the second part of what we began to  
7 discuss was instructions for operation of the  
8 various equipment. In your company who prepares  
9 those instructions?

10 A. John Bielecki oversees it. I believe he  
11 has prepared the majority of them.

12 Q. He prepares them himself or he obtains  
13 them from a manufacturer or a combination?

14 A. I would have to check with him. I don't  
15 know.

16 Q. You don't know. Do you know if there's a  
17 standard that speaks to who should be preparing the  
18 instructions for the equipment that your employees  
19 are operating?

20 A. In regards to refilling and transfilling  
21 tanks?

22 Q. I'll adopt that, yes.

23 A. No, I would have to check with John on  
24 that. I don't know myself. I'm not an expert on  
25 that part.

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Q. In the photographs that you reviewed from the OSHA report of the test tank, did it have any warnings on it?

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A. The test tank, I don't believe so.

5

Q. Did it have any instructions on it?

6

A. Yes. It had a DOT marking on it.

7

Q. Are you considering that to be an instruction?

8

9

A. I would say the 225 marking on it would clearly indicate that the psi is 225.

10

11

Q. Does it indicate anything besides the fact that -- I may be saying this slightly differently than you, but that the input pressure was 225 psi?

12

13

A. No.

14

Q. Now you say that -- in your report again, that a calibrated pressure relief valve should have been used; is that correct?

15

16

A. Yes.

17

Q. And you would agree that the use of such a valve would have helped prevent this accident; is that correct?

18

19

A. That I discussed with John Bielecki and yes, based off of that, I agree.

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1 K. Juliano

2 Q. Is there any standard -- I'm sorry.

3 A. Go ahead.

4 Q. Is there any standard or regulation that  
5 requires the use of that type of valve?

6 A. I don't know.

7 Q. In the materials that you did review  
8 including the manual for the system, for this  
9 specific system, not one that you have in your  
10 company, which refers to the agent tank, does that  
11 manual require the use of a pressure relief valve?

12 A. Are you asking Pyro-Chem or from the  
13 Poseidon cascade system?

14 Q. I'm asking about the Pyro-Chem manual.

15 A. No, it does not discuss how to refill an  
16 agent or a test agent tank.

17 Q. Are there any warnings in that Pyro-Chem  
18 manual or on the agent tank that a pressure relief  
19 valve should be used?

20 A. I don't know.

21 Q. You also say that a calibrated and  
22 properly engaged regulator and a safety cage should  
23 have been used. I'm going to just break that down  
24 now.

25 What is the basis for the statement that

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there was no calibrated regulator being used on the day of the accident?

A. I believe that was in the deposition or the report. I don't have it in front of me. I don't know off the top of my head.

Q. You didn't inspect it yourself, correct?

A. No.

Q. Are you aware that there is no evidence that the regulator was not properly calibrated that day?

A. I'm not aware.

Q. When you say a safety cage, what are you referring to?

A. A four-sided cage which a cylinder would be placed into with the door closed. In case of a rupture, it would somewhat limit damage or injury.

Q. Have you seen those types of cages in this context?

A. Yes, I have one in my shop.

Q. What manufacturer is the one in your shop?

A. I have no idea.

Q. Let me back up a little bit. Are you familiar with the Poseidon cascade system?



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2 A. No.

3 Q. Have you ever operated one?

4 A. No.

5 Q. Do you have any idea or knowledge or  
6 experience about what types of models of the  
7 Poseidon cascade system were on the market prior to  
8 2016?

9 MR. KIRKPATRICK: Objection to form.

10 Asked and answered.

11 A. Are you waiting on me?

12 Q. Yes. You can answer the question.

13 A. Please repeat it.

14 Q. I will. Do you have any knowledge about  
15 what models of the Poseidon cascade system were on  
16 the market prior to February of 2016?

17 A. No.

18 Q. The type of safety cage that you just  
19 described from your review of the file, did the  
20 Poseidon cascade system have such a system on it?

21 A. I don't recall.

22 Q. You did earlier say that you did read the  
23 deposition testimony of Patty Scott, correct?

24 A. Yes.

25 Q. Did you review the photographs that were

1 K. Juliano

2 marked as exhibits during her deposition which  
3 showed the Poseidon cascade system?

4 A. Yes. I reviewed the items early March.  
5 I can't picture it top of my head.

6 Q. Are you aware that those photographs show  
7 and she testified that there were these steel  
8 cylinders that were attached to the front of the  
9 compressor that the bottles could be placed inside  
10 of when they were being built?

11 A. I don't recall.

12 Q. You state in your report -- I don't know  
13 if you said Mr. Foust or somebody filling the  
14 cylinder, that that person should know not to set  
15 the regulator to fully open, correct?

16 A. I believe so, yes.

17 Q. Is your statement that that's what was  
18 actually done here, that the regulator was set to  
19 fully open?

20 A. No. I'm saying -- we stated if it was,  
21 it should not be fully open after review with  
22 Mr. Bielecki from my office. What happened in this  
23 case, I have no idea.

24 Q. You're not saying that Mr. Foust did that  
25 or he did that intentionally as part of his

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2 training, are you?

3 A. No. I don't know.

4 Q. Or that his instinct or instincts or his  
5 experience would have led him to believe that that  
6 would have been the best practice to set it at fully  
7 open? Are you saying that?

8 A. All I know is, he received the buddy  
9 training from Mr. Scott.

10 Q. To be clear, Mr. Foust did not actually  
11 testify in this case; are you aware of that?

12 A. No. Are you talking about his  
13 deposition?

14 Q. Are you aware that Mr. Foust is now  
15 deceased?

16 A. Yes.

17 Q. And he did not testify in this case?

18 A. I'm sorry. Was it the OSHA statements he  
19 made?

20 Q. I just want to --

21 A. Yes. Yes.

22 Q. I'm not trying to catch you. I just want  
23 to be clear what the source of your information is.

24 And you did read the OSHA report, right?

25 A. Yes.

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Q. Are you aware from reading that report that Mr. Foust advised OSHA at what level he set the output pressure?

A. Again, I read that report back in March. I don't recall.

Q. So do you remember that he actually told the OSHA investigators that he believed he was setting the output pressure at 450 psi?

A. Yes. I don't recall reading that totally.

Q. That's not fully open, right?

A. I am not an expert on the cascade system or Poseidon system, so I can't answer that.

Q. On page 9, I'm looking at the second full paragraph now, you go on to discuss the warnings on your cylinder and it is your opinion that they were clear, concise and consistent. What exact warnings are you talking about there?

A. I'm just going to read the paragraph if that's okay.

Q. Yeah. Take your time. No problem.

A. So in that paragraph that I'm talking about the technician unfamiliar with the product he's using, if he was trained properly, would have

1 K. Juliano

2 had access to the 800 number to call the  
3 manufacturer to discuss what he was working on.

4 Q. So my question is specifically about more  
5 the second sentence of that paragraph, "The warnings  
6 here are clear, concise and consistent with industry  
7 standards."

8 Did I read that correctly?

9 A. Yes. Industry standards, you would not  
10 work on a system that you are not certified for.

11 Q. I hear what you're saying there, but my  
12 question is: When you say the warnings here, what  
13 is your reference to? What are you referring to?

14 A. The warnings. He's working on that  
15 Pyro-Chem tank that is marked with 225 psi that was  
16 not functioning. In my opinion, he should have  
17 stopped, called for help, Pyro-Chem, Mr. Scott. He  
18 should not have continued.

19 Q. Is the warning that you're referring to  
20 then the 225 psi marking? Is that what you mean in  
21 that sentence?

22 A. In addition to working on a Pyro-Chem  
23 tank.

24 Q. But working on a tank is not a warning;  
25 is that fair?

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2 A. No. I wouldn't say that. You are  
3 trained in -- in all the training you go through, if  
4 you are designing the system, installing it,  
5 refilling it, we are here for you, we have an 800  
6 number, call us. That is the whole basis for the  
7 training. Not just Pyro-Chem. This is every  
8 manufacturer that I've been involved with.

9 Q. So you're saying that the warning that  
10 you're also incorporating in this sentence -- in  
11 this sentence is the offer that a manufacturer can  
12 be contacted in the event of a problem? Is that  
13 what you're saying?

14 A. I'm not sure --

15 MR. KIRKPATRICK: Objection to form.

16 A. I'm not sure if that's the correct word.  
17 That is one of the advantages of being a  
18 distributor. Offer is a poor choice of words.

19 Q. You're not talking about any specific  
20 thing that's written on the test tank, am I correct,  
21 other than the 225 psi marking?

22 A. The 225, the DOT markings.

23 Q. And that refers to the input pressure,  
24 correct?

25 A. I believe so, yes.

1 K. Juliano

2 Q. And is there any evidence you reviewed  
3 that would lead you to believe that Mr. Foust did  
4 not understand that the input pressure was 225 psi?

5 A. I don't know. I'm not sure what he was  
6 thinking.

7 Q. Actually, on page 10, you talk about in  
8 the first paragraph, quote, it does not appear as  
9 though there was any confusion as to the target psi  
10 of the cylinder.

11 Is that what you wrote there?

12 A. On page 10?

13 Q. Yeah.

14 A. One sec. Correct. I see it right there.

15 Q. Did Mr. Foust or any other witness,  
16 namely the plaintiff, offer any testimony that  
17 Mr. Foust was unclear about the meaning of the  
18 225 psi marking?

19 A. I don't recall.

20 Q. What Mr. Taranto talks about and the  
21 issue that he discussed is not the 225 psi marking  
22 on the cylinder relating to input pressure, but all  
23 of the other information that we see on an agent  
24 tank not being included on a test tank; is that  
25 right? Is that what Mr. Taranto was really talking

1 K. Juliano

2 about in his report?

3 A. Can you give an example?

4 Q. So I'm just trying to cut a corner in our  
5 conversation. Mr. Taranto talks about in his report  
6 that there was a lot of other information on the  
7 label of the agent tank that does not appear on the  
8 test tank; is that a fair statement of what he talks  
9 about?

10 A. Yeah. Yeah.

11 Q. And you talk about the fact in your  
12 report, you talk about the fact that Mr. Taranto  
13 suggests that the same information should be  
14 included on both the agent tank and the test tank,  
15 right?

16 A. Yes.

17 Q. You go on to state in your report,  
18 "Manufacturers often provide labels even though they  
19 are not required to do so for the benefit of the  
20 less knowledgeable end user who is responsible for  
21 certain aspects of" -- might have typed this  
22 wrong -- "of maintaining the system including  
23 monthly inspection." Is that what you wrote?

24 A. Yes.

25 Q. So are you saying that some instructions



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2 are not required but they're put there anyway by  
3 some manufacturers?

4 A. No. Any tank that is left with an end  
5 user is labeled. It's labeled -- that's one  
6 example, the owner or whoever is in charge of the  
7 building is required to do monthly inspections.  
8 It's things to make sure the tank is not blocked,  
9 the gauge is readable, things of that nature. But  
10 the other reason they would be labeled is for a  
11 first responder in case of a fire. It could be for  
12 an insurance carrier wanting to see the type of  
13 system. A test tank would never be left with an end  
14 user, so there would be no reason to label it with  
15 that information there.

16 Q. Now you did give some examples which you  
17 included in appendix C. Those are from other  
18 manufacturers like Range Guard and Kidde; is that  
19 right?

20 A. Yes.

21 Q. But you didn't provide any from Pyro-Chem  
22 or Tyco in that appendix; is that correct?

23 A. Correct.

24 Q. Is that because they don't provide those  
25 instructions?

1 K. Juliano

2 A. I don't believe so.

3 Q. From your --

4 A. You're breaking up on me.

5 Q. From your review of all of the evidence  
6 and your experience and your training, do you have  
7 any basis for why Tyco does not include those  
8 instructions but the other manufacturers do?

9 A. I have no idea what Tyco does or does not  
10 do.

11 Q. I think you might have just talked about  
12 this, but you say in your report because the test  
13 cylinder is not left with the end user it makes  
14 sense that the manufacturer did not include warnings  
15 on the test cylinder; is that accurate?

16 A. Yes.

17 Q. So who are you presuming to be the end  
18 user in that statement?

19 A. The end user would be the customer who  
20 would keep the tank or cylinder on site.

21 Q. I think I covered this next section of  
22 questions so I don't want to be duplicative. Give  
23 me a moment. I'm not going to go back through these  
24 questions but I just want to create some context  
25 here.

1 K. Juliano

2 You talk about in your report that  
3 authorized distributors would know that the warnings  
4 on agent cylinder nameplate equally apply to the  
5 test cylinder. And I've already asked you questions  
6 about that.

7 Then you go on to say that is all, quote,  
8 besides the point because anyone handling the test  
9 tank would know that overfilling would lead to  
10 rupture and serious injury. Is that an accurate  
11 reading of your opinion?

12 A. Yes.

13 Q. Do you have any reason to believe that  
14 Mr. Foust did not know that or he overfilled that  
15 purposely because that is what he was trained to do?

16 A. No, I have no idea.

17 Q. In fact, based upon the testimony of the  
18 plaintiff, the two men who were in that room both  
19 believed that the test tank hadn't taken on any air  
20 at all; is that correct?

21 A. I read their OSHA report back in March.

22 Q. Did you review Mr. Buono's deposition  
23 testimony before coming to the deposition?

24 A. Yeah, but not recently.

25 Q. So I'm moving to the top of page 10 now.

1 K. Juliano

2 And I'm right at the top of the first sentence,  
3 "Mr. Taranto is incorrect in his assertion that the  
4 Kitchen Knight manual is specific to the agent  
5 cylinder in discussing refilling procedures."

6 Where in the manual does it discuss  
7 refilling procedures at all?

8 A. You know, I don't have the manual in  
9 front of me. I wish I did. I don't know off the  
10 top of my head.

11 (Technical difficulty.)

12 A. Can you hear me? I lost Tara.

13 MR. KIRKPATRICK: I can hear you. Why  
14 don't we take a break and give her a chance to  
15 get back on.

16 MS. FAPPIANO: I have no idea what just  
17 happened. I just got totally kicked off. I  
18 don't know if I had a pending question.

19 (Record read.)

20 Q. In the last sentence from the first  
21 paragraph is where I'm going now. Do you agree that  
22 one of the intended uses for the test tank was for  
23 balloon testing?

24 A. To me it would be more for an acceptance  
25 test, balloon test, not for a routine maintenance.

1 K. Juliano

2 Q. But you do state here that the test  
3 cylinders and balloon cylinders are commonplace in  
4 the industry?

5 A. Oh, yeah. The pipe integrity test is  
6 required once a year on a commercial fire system.

7 Q. Do you also agree that concise  
8 communications to the end user is critical?

9 A. Regarding?

10 Q. I'm just reading what you're saying. So  
11 maybe you can tell me --

12 A. Where are you?

13 Q. Hold on. Let me see if I can find it.  
14 You say in the first sentence of the second  
15 paragraph, "Mr. Taranto is correct that from an  
16 industry perspective concise communication to the  
17 end user is critical."

18 A. Right. The stamp I was given was the 225  
19 marking on the tank.

20 Q. You were saying that the one marking of  
21 the 225 psi is actually better than a longer  
22 warning; is that correct?

23 MR. KIRKPATRICK: Objection. I object to  
24 the form of the question.

25 A. What I'm saying the 225 marking on a

1 K. Juliano

2 cylinder that you are certified for is clear and  
3 concise to me.

4 Q. That 225 stamp though is really for only  
5 one purpose to show the input pressure of the tank;  
6 is that correct?

7 A. I don't know. That is not my specialty.

8 Q. Let me just get to where I read this so  
9 I'm directing you. Do you also agree that the use  
10 or reprint of industry standards in warnings is  
11 superfluous?

12 A. That's what I wrote. To me that is --  
13 it's commonplace, it's common knowledge.

14 Q. And so also warnings on common sense are  
15 also superfluous?

16 A. Warnings of common sense?

17 Q. Yes.

18 A. To reproduce in the industry, yes. I'm  
19 sorry. I'm reading from my report. I apologize.

20 Q. Take your time.

21 A. Yeah, what I'm getting is, anyone who is  
22 certified to work on it, that is to me  
23 counterproductive. You should know already.

24 Q. So is it fair to say then that those  
25 types of superfluous -- those types of warnings are

1 K. Juliano

2 only superfluous in a scenario in which the people  
3 working on it are certified distributors?

4 A. Those kind of warnings would be better  
5 for an end user, for a first responder like we  
6 talked about, an insurance carrier who would not  
7 know what that tank is.

8 Q. You go on to discuss the need to provide  
9 training on transfilling. If I'm reading this  
10 correctly, you're saying that it's not the  
11 responsibility of the manufacturer of the test tank  
12 to offer those instructions on how to fill it; is  
13 that right?

14 A. Yeah. In discussing this with  
15 Mr. Bielecki, there are obviously many different  
16 ways to refill or transfill a tank. Some are done  
17 with air, some are done with nitrogen. There are  
18 different types of systems like the cascade that  
19 Oprandy's used. It would be very difficult to cover  
20 all the different types of ways to do this.

21 Q. This all comes from Mr. Bielecki; is that  
22 correct, you're relying on what he told you?

23 A. On this part, yes.

24 Q. Did you discuss with Mr. Bielecki who  
25 prepares transfilling procedures or who should?

1 K. Juliano

2 A. Who should prepare --

3 Q. Preparing the transfilling procedures,  
4 yes. Did you discuss that with him?

5 A. I don't recall.

6 Q. Did you discuss with him who does it in  
7 your company?

8 A. Yes. Yes. I have three people trained  
9 to do that.

10 Q. Creating their own procedures; is that  
11 what you're saying?

12 A. To create their own procedures? I'm  
13 sorry. Could you repeat the question?

14 Q. What I'm asking is: In your company, who  
15 creates the transfilling procedures that are given  
16 to your employees to do that type of work?

17 A. John Bielecki.

18 Q. He does them himself?

19 A. I'm not sure if it's himself or if he's  
20 utilizing a third-party company or manuals.

21 Q. Or obtaining them from the manufacturer?

22 A. I'm not sure.

23 Q. Are you aware that one of Tyco's expert  
24 witnesses in this case, Chason Coelho -- and to be  
25 fair, I don't think you would have read his



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K. Juliano

deposition testimony yesterday yet, because I just got it this morning, but I do believe it's discussed in his report, he states that the transfilling procedures should have come from the manufacturer of the cascade system.

Do you agree with that opinion or can you agree with that opinion?

A. I don't know. That is not my expertise.

Q. That's outside of your expertise completely; is that correct?

A. It is. Correct.

Q. You go on to say that Tyco, quote, repeatedly, like all manufacturers, reminds all distributors to follow applicable industry standards and regulations.

What's your basis for that statement that they remind authorized distributors?

A. That occurs during the manufacturer training, oftentimes that is discussed.

Q. Do you have any evidence or any basis to conclude in this case that those reminders would have been provided to an authorized distributor?

A. I don't think so but --

MR. KIRKPATRICK: Objection to form.

1 K. Juliano

2 Sorry. Objection to form.

3 Q. You can answer that.

4 A. Can you ask that again?

5 MS. FAPPIANO: Can you just read the  
6 question, Liz?

7 (Record read.)

8 A. Like I said, that is discussed during  
9 training with all the manufacturers.

10 Q. But there's nothing specific to which you  
11 are referring to right now?

12 A. No.

13 Q. I'm at page 10 towards the end of the  
14 third paragraph. You say, "In light of this, it is  
15 far from, quote-unquote, impossible for one to be  
16 properly trained to fill Kitchen Knight cylinders;  
17 indeed, it is required before handling the product."

18 What is your basis for the statement that  
19 training is required before handling the product?

20 A. Training is basically to know what you  
21 are doing and to prevent accidents like what  
22 occurred here.

23 Q. What is the requirement that you are  
24 referring to?

25 A. The requirement is only an authorized

1 K. Juliano

2 distributor should be working on a system that  
3 they're authorized for.

4 Q. Is that the standard or regulation?

5 A. That is from NFPA 17A, that would refer  
6 back to the manufacturer of manuals.

7 Q. Does the manufacturer of manuals in this  
8 case indicate that that training is a requirement  
9 for filling of test tanks?

10 A. Can you repeat the question?

11 (Record read.)

12 A. No.

13 Q. Does Tyco have any process or procedure  
14 in place to insure that such training occurs before  
15 a test tank is sold or distributed to an individual  
16 or a company?

17 A. Please repeat that again.

18 (Record read.)

19 A. Other than during the training classes  
20 that is hit on hard about being authorized to work  
21 and know what you're doing.

22 Q. Only within those classes; is that  
23 correct?

24 A. I wouldn't say that. The way it works in  
25 the industry with the manufacturers I represent is

1 K. Juliano

2 you are assigned a technical or salesperson who  
3 calls on your territory. They will step out  
4 periodically, once a quarter, once a month, and you  
5 sit with them and you review the product line,  
6 issues you have, questions you have, things of that  
7 nature.

8 Q. So when you say they will come out, you  
9 mean the salespeople will come out?

10 A. Yeah, the rep. The rep that you are  
11 assigned, yes.

12 Q. So the sales representative?

13 A. I wouldn't say sales. They're technical  
14 sales. For sales and technical questions, too.  
15 It's a relationship --

16 Q. I'm just trying to understand who you're  
17 talking about. That's all.

18 A. In this case Pyro-Chem has a rep who is  
19 our territory rep. He will pop in and visit with us  
20 periodically. And we can discuss things that we  
21 want with him.

22 Q. Is that true for every Pyro-Chem customer  
23 or does it depend upon the size of the company?

24 A. Again, I don't make the rules. But I  
25 would assume it is for all Pyro-Chem distributors

1 K. Juliano

2 having access to the rep.

3 Q. But that's an assumption, that's not  
4 based on anything specific; is that correct?

5 A. Oh, I would have no idea of Tyco's rules  
6 for their personnel.

7 Q. In the last -- that's okay. I have  
8 another question.

9 A. Go ahead.

10 Q. The last paragraph at page 10, you say,  
11 quote, the manual tells an authorized distributor  
12 all he or she needs to know to, quote, safely  
13 design, install and reliably perform the maintenance  
14 and recharge, end quote, of the Kitchen Knight  
15 system in accordance with its design, installation  
16 and manual.

17 So my first question is, you are quoting  
18 something else there in that sentence there. What  
19 are you quoting?

20 A. I believe that quote is right out of a  
21 Pyro-Chem manual.

22 Q. So are you saying that the manual is  
23 completely sufficient no matter who uses an agent  
24 tank?

25 A. No. What I'm saying is the training from

1 K. Juliano

2 a company like Pyro-Chem, they cannot cover every  
3 bit of top to bottom with the system. That is why  
4 they have a support staff that you should call and  
5 talk about any questions you have when it comes to  
6 installing, inspecting or servicing the system.

7 Q. Is the manual only sufficient for someone  
8 who's using a test tank?

9 A. No. The manual covers the core parts of  
10 the system. And Pyro-Chem, like I said, the reps,  
11 the technical services is there for any question.

12 Q. Again, this training is provided only to  
13 distributors, not to end users; is that correct?

14 A. Correct.

15 Q. And anyone can buy a test tank separately  
16 from the system itself; is that correct?

17 A. Repeat that.

18 Q. Anyone can go and buy a test tank  
19 separately from the system themselves, correct?

20 A. Oh, I don't know.

21 Q. Are you saying that the inclusion of  
22 additional regulations that the -- are you saying  
23 that the language from regulations should not be  
24 included in the manuals; is that what you're saying  
25 as well?

1 K. Juliano

2 A. Again, if you bring in CGA, DOT, OSHA  
3 into the manual, you would be looking at a pretty  
4 long read.

5 Q. So it's not necessary to put it in there,  
6 it's just -- instead you would be relying on the  
7 user of the system to just go and find those  
8 regulations themselves; is that correct?

9 A. No. Again, Pyro-Chem, any manufacturer  
10 would lead you in the right direction for any  
11 questions of that nature.

12 Q. And we talked about this a little bit  
13 earlier, but the use of the test tanks for balloon  
14 testing or pipe integrity testing is commonplace; is  
15 that correct?

16 A. It's a requirement for NFPA.

17 Q. So is it fair to say that that's a  
18 foreseeable use of the tank?

19 MR. KIRKPATRICK: Objection to form.

20 A. What was that?

21 Q. Is it fair to say that the use of the  
22 test tank for balloon testing is a foreseeable use  
23 of that tank?

24 MR. KIRKPATRICK: Objection to form.

25 Leads to a legal conclusion.

1 K. Juliano

2 MS. FAPPIANO: He puts legal conclusions  
3 in this report, so I'm just asking about them.

4 Q. You can answer the question.

5 A. Yeah.

6 Q. Now I'm going to back up briefly to pages  
7 7 and 8 of your report which is where you talk about  
8 the CGA. Let me just get there. You talk about it  
9 mostly at the very bottom from page 7 going into  
10 page 8. That's really where I'm focused right now.

11 Do you agree that your company and  
12 Oprandy's both have to comply with the rules on the  
13 safe handling of compressed gases?

14 A. Yes.

15 Q. Going over to page 8, do you agree that  
16 the handlers of compressed gases must be familiar  
17 with the inherent properties and hazards of the  
18 products?

19 A. Yes.

20 Q. Then you go on to say that CGA places the  
21 burden of, quote, providing detailed written  
22 operating instructions on the supplying of the  
23 transfill equipment? Is that accurate?

24 A. Yes.

25 Q. What do you mean in that sentence by



1 K. Juliano

2 detailed operating instructions?

3 A. Again, that is not my wheelhouse. That  
4 is information we got, I believe from the 2015 and  
5 2014 versions of the CGA.

6 Q. And the burden of providing those  
7 instructions is on the supplier of the transfill  
8 equipment. So who is that in that sentence?

9 A. In this case it would have been  
10 Oprandy's.

11 Q. Why is Oprandy's the supplier of  
12 transfill equipment in this case?

13 A. Again, this is not my wheelhouse. I can  
14 defer to John on that. I believe this is directly  
15 out of the CGA. They are the ones filling the tank.

16 Q. You don't have a basis to explain your  
17 opinion on this; is that fair to say?

18 A. I would say I don't have the manual of  
19 the CGA in front of me. No.

20 Q. You don't have independent expertise in  
21 the CGA; is that correct?

22 A. Myself? My company does. I do not.

23 Q. Do you know then whether the CGA requires  
24 companies like yours to create any other types of  
25 labels for a test tank such as this one which was

1 K. Juliano

2 going to be used in the context of Mr. Scott using  
3 it to do a pipe integrity test of a Kitchen Knight  
4 system in a local deli?

5 A. Again, that is not my separate specialty.  
6 I don't know what they would go and look at.

7 Q. In your experience then and your work in  
8 your own company, would you have been able to go do  
9 the work that Mr. Scott was going to do, pipe  
10 integrity testing? Are you qualified to do that?

11 A. Yes.

12 Q. If you were going to do that or if you  
13 were to ask an employee to go and do that, would you  
14 have created a label and affixed it to the test  
15 tank?

16 A. My company does not use test tanks. So  
17 the tanks my company uses are already labeled.

18 Q. They come labeled already?

19 A. Yes.

20 Q. Do they come labeled by the manufacturer?

21 A. Yeah. What we use is either a regular  
22 agent tank that is empty. We use that for an  
23 acceptance test. For the routine maintenance we use  
24 a pipe integrity test kit which is manufactured by  
25 another company. The tanks we use are smaller and

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K. Juliano

they're able to be used with any manufacturer that we represent. It makes it a lot easier.

Q. To your knowledge, you don't create any warnings that go on those tests or any parts that are part of that testing equipment, do you?

A. No.

Q. This is sort of the last thing I want to talk about. You talk about that you made a query at one point with one manufacturer and you were able to pull up 50 bulletins; is that correct?

A. Yes.

Q. And what manufacturer was that for?

A. Ansul.

Q. Did you make a query for Pyro-Chem or Tyco?

A. I believe I did for Pyro-Chem as well.

Q. Just prior to February of 2016 did any bulletins come up relating to test tanks?

A. I don't recall.

Q. If they did, would you have kept them with all of the documents and notes and other materials that you have for preparing this report?

A. I would guess I would have, yes.

Q. So they would be there if I asked you to

1 K. Juliano

2 produce them?

3 A. You're breaking up.

4 Q. So those bulletins would be there if I  
5 asked you to produce them if they were found?

6 A. Oh, yes.

7 Q. Do you recall if there were any bulletins  
8 relating to the Kitchen Knight system generally that  
9 were found that were from prior to February of 2016?

10 A. Yes.

11 Q. There were some?

12 A. Yes.

13 Q. Do you recall generally what topics those  
14 were on?

15 A. The one that comes to mind is the collar  
16 that needed to be placed on tanks.

17 Q. Besides that.

18 A. I'm sure there's others. So any  
19 distributor can have access to the website and they  
20 can pull up all the bulletins and both Ansul and  
21 Pyro-Chem go back many, many years.

22 Q. And besides that issue that we talked  
23 about with that collar, if I'm remembering it  
24 correctly, was there any -- and understanding that  
25 wasn't actually a recall, but was there any recall

1 K. Juliano

2 information relating to testings of the Kitchen  
3 Knight system that you found that predated February  
4 of 2016?

5 A. I'm not sure. I would have to go back  
6 and check.

7 Q. That would also be in the documents that  
8 you maintain?

9 A. Yes. I do not print those. I have  
10 access to those through our distributor.

11 Q. Just from what you recall right now, did  
12 you in reviewing bulletins that predated February of  
13 2016 from Tyco, Pyro-Chem, did any of those include  
14 any supplemental warning information or instructions  
15 for transfilling?

16 A. I don't recall.

17 Q. Or any information at all about the use  
18 of test tanks in that same time period?

19 A. You were breaking up again.

20 Q. Or any information at all for that same  
21 time period about the use of test tanks?

22 A. No, I don't believe so.

23 Q. As you sit here right now, do you have  
24 any intention of supplementing your report?

25 A. No.

1 K. Juliano

2 Q. I think at the beginning of your report  
3 you mention that you would offer to give a tutorial.  
4 Are you intending on doing that in connection with  
5 this case to any of the attorneys?

6 A. I have not been asked to.

7 Q. If you were to receive additional  
8 information or evidence that would change your  
9 analysis in this case, would it be appropriate for  
10 you to take that into account and provide a  
11 supplemental report?

12 A. Yes.

13 Q. Do you have any intention of doing that  
14 right now?

15 A. No.

16 MS. FAPPIANO: I don't believe I have any  
17 further questions. Thank you very much.

18 THE WITNESS: Thank you.

19 MR. FROMSON: I have no questions for the  
20 witness. Thank you.

21 MR. KIRKPATRICK: I have a couple. Can  
22 we take like a five-minute break, though,  
23 first.

24 MS. FAPPIANO: That's fine.

25 (A recess was taken from 12:45 p.m. to

1 K. Juliano

2 12:50 p.m.)

3 EXAMINATION BY

4 MR. KIRKPATRICK:

5 Q. I promise to be very brief. Mr. Juliano,  
6 you mentioned that you reviewed the transcript for  
7 the deposition of Tom Taranto in preparing for this  
8 deposition, right?

9 A. Yes.

10 Q. Do you recall reading a portion where he  
11 discussed ordering an agent tank from Tyco  
12 presumably for a pre-engineered system?

13 A. Yes.

14 Q. Would it be possible for a nonauthorized  
15 distributor to order a test tank, whether for the  
16 Kitchen Knight system or otherwise, from Pyro-Chem  
17 directly?

18 A. Not from Pyro-Chem directly.

19 Q. After you read that portion of  
20 Mr. Taranto's transcript, did you do anything to  
21 confirm that a nonauthorized distributor could not  
22 order such a training tank from Pyro-Chem?

23 A. Yes. I did reach out to our Pyro-Chem  
24 rep and asked him that question and his response was  
25 no. The only way it would be possible through a

1 K. Juliano

2 gray market, meaning a top price company selling to  
3 other people where they should not be.

4 Q. So authorized distributors are not  
5 allowed to sell test tanks, it would be against  
6 Pyro-Chem's rules?

7 A. Yes, exactly.

8 MR. KIRKPATRICK: I have no other  
9 questions.

10 THE WITNESS: Thank you.

11 MS. FAPPIANO: Just to follow up on that.

12 BY MS. FAPPIANO:

13 Q. That conversation, who was that with?  
14 What was his name?

15 A. Jeff Webb, W-E-B-B.

16 Q. That conversation and the questions that  
17 you asked him, were they about what the practice is  
18 now in 2020 or prior to 2016?

19 A. It was actually an email. It was  
20 generic. I didn't have a date on it.

21 Q. Did you save that email?

22 A. I couldn't hear you.

23 Q. Did you save that email?

24 A. Yes.

25 MS. FAPPIANO: I'm going to ask that that



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K. Juliano

now be produced. I have no further questions.  
Thank you.

THE WITNESS: Thank you.

MR. KIRKPATRICK: Thanks.

COURT REPORTER: Mr. Fromson and Mr.  
Kirkpatrick, do you want copies as well?

MR. FROMSON: I'll take a copy. I don't  
need it expedited.

MR. KIRKPATRICK: Same here.

(Whereupon, the proceedings were  
adjourned at 12:52 p.m.)

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STATE OF \_\_\_\_\_ )  
 ) : ss  
COUNTY OF \_\_\_\_\_ )

I, KURT JULIANO, the witness  
herein, having read the foregoing  
testimony of the pages of this deposition,  
do hereby certify it to be a true and  
correct transcript, subject to the  
corrections, if any, shown on the attached  
page.

\_\_\_\_\_  
KURT JULIANO

Sworn and subscribed to before me,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public

## I N D E X

WITNESS	EXAMINATION BY	PAGE
KURT JULIANO	MS. FAPPIANO	5
	MR. KIRKPATRICK	102
	MS. FAPPIANO	103

## E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 1	expert disclosure	6
REQUEST:		PAGE
List of photographs or anything to		26
itemize what you reviewed in terms of the		
agent tanks in your shop		
Materials you reviewed from that		29
third-party company		
Notes		30
email with Jeff Webb		103

CERTIFICATE

STATE OF NEW YORK )

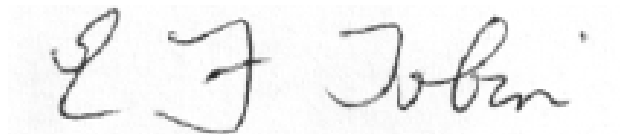
) ss.

COUNTY OF SUFFOLK)

I, Elizabeth F. Tobin, a Registered Professional Reporter and Notary Public within and for the State of New York, do hereby certify:

That Kurt Juliano, the witness whose deposition is hereinbefore set forth, was duly sworn by me remotely and that such deposition is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

A handwritten signature in cursive script that reads "Elizabeth F. Tobin". The signature is written in dark ink on a light background.

ELIZABETH F. TOBIN, RPR

## INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition.

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[&amp; - agent]

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[believe - check]

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[correct - directly]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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